* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th November, 2007

Crl.M.C.No.6853/2006

\# **P. SHRIRAM** .....Petitioner

! Through Mr. A. Ramesh with Mr. R.Anand Padmanabh, Advocates

versus

$ **IMATION INDIA PVT. LTD. & ORS.** ..... Respondents

^ Through Ms. Priya Puri, Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

The present petition is filed under section 482 of the Code of Criminal Procedure for quashing of complaint case No. 4/1/2006 titled as 'M/s. Imation India Pvt. Ltd. Vs. MBO Computers (I) Ltd. & Ors.' under Section 138 of the Negotiable Instruments Act pending in the Court of Metropolitan Magistrate, New Delhi as also the order dated 24-01-2006 of the learned Metropolitan Magistrate whereby the present petitioner was summoned as an accused.

2. It is alleged in the petition that the petitioner joined the respondent no. 2 as a

Director on 05-08-1998 and resigned from that post in the end of 1998 and thereafter he is continuously residing in USA. It is further alleged that since the cause of action arose in the year 2005 he has nothing to do with the complaint case pending the Court of Metropolitan Magistrate, New Delhi as he was not connected with the activities of the accused Company, respect no. 2 herein and so he should not have been summoned as an accused.

3. I have heard the learned counsel for the petitioner and learned counsel for the respondent no.1, complainant.

4. The only submission made by the learned counsel for the petitioner in support of his prayer for quashing of the complaint qua the petitioner was that the complaint does not contain any averment from which it could be inferred that the petitioner was in any way in-charge of and managing day to day affairs of the Company, namely, M/s. MBO Computers (I) Pvt. Ltd. and therefore, he could not have been summoned as an accused in respect of the offence allegedly committed by the said Company. Learned counsel placed reliance upon two judgments of the Hon'ble Supreme Court reported as "**S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.", 2005 (8) SCC 89** and **2007 (1) JCC 112, "N.K.Wahi Vs. Shekhar Singh & Ors.".** On the other hand, learned counsel for the respondent no. 1, complainant, contended that there was no deficiency in the averments in the complaint regarding the liability of the present petitioner inasmuch as it had been categorically pleaded by the complainant that the present petitioner was also

personally and jointly responsible for the payment to be made by the accused Company of which he was a Director.

5. The Hon'ble Supreme Court in the S.M.S. Pharmaceuticals and N.K.Wahi's cases(supra) has held that if in a complaint under Section 138 Negotiable Instruments Act filed against a Company any of its Directors are also impleaded as accused persons then the complaint must contain an averment that those Directors were in-charge and responsible for the conduct of the business of the Company at the time of commission of the offence. However, in the present case the complainant had not averred in its complaint that the present petitioner was in-charge and responsible for the management of the affairs of the accused Company at the time of the commission of the offence alleged to have been committed by the accused Company and a simple averment to the effect that the petitioner was personally and jointly responsible for the payment will not satisfy the requirement of law, as laid down by the Hon'ble Supreme Court in the above referred two cases. Therefore, the learned Magistrate was not justified in entertaining the complaint against the present petitioner and summoning him as an accused along with the Managing Director(respondent no. 3 herein) of the Company(respondent no.2 herein).

6. This petition is, therefore, allowed and the complaint filed against the petitioner by M/s. Imation India Pvt. Ltd., respondent no. 1 herein, under Sections 138 of the Negotiable Instruments Act as well as the order of the learned

Metropolitan Magistrate dated 24th January, 2006 summoning him as an accused are hereby quashed.

November 7, 2007 **P.K.BHASIN,J**

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